

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2222 OF 2006

Mr. Ishwarbhai Vithalbhai Sochapara ... Petitioner

Vs.

D.B. Marg Police Station & Ors. ... Respondents

Mr. S.P. Kadam with Mr. Jagdish Chaudhari for the petitioner.

Mr. D.S. Mhaispurkar, A.P.P. for the State.

**CORAM : SMT. RANJANA DESAI &
ANOOP V. MOHTA, JJ.**

DATED : 14TH FEBRUARY, 2007.

P.C.:-

1. The petitioner is a member of Diamond Traders Association. According to the petitioner, the deals of sale and purchase of diamonds are made through agents known as 'brokers'. Such deals are on approval basis through "Zangad" by which diamonds are entrusted with brokers for finalization of deal of sale of diamonds.

2. It is the case of the petitioner that one Vijay Patel and his father Mr. Vajubhai Patel have been working in the diamond market for long time. The petitioner has handed over diamonds valued at about Rs.37,00,000/- to Vijay Patel on approval basis. The said Vijay Patel has, however, no authority to sell the diamonds without the final approval of the petitioner. According to the petitioner, for a long period, Vijay Patel and his father Vajubhai Patel did not

return the diamonds or the value of the diamonds. The petitioner came to know that both of them have vanished by cheating several traders in the market. The petitioner has, therefore, approached the Crime Branch and the D.B. Marg Police Station. However, though cognizable offences were disclosed, the complaint was not registered. The petitioner, therefore, filed a private complaint before the Magistrate, Girgaon. The learned Magistrate has directed the police to investigate the matter and file a report under section 156 (3) of the Criminal Procedure Code. The police then registered M.E.C.R. No.8 of 2005. The main accused and the co-accused, who have received the stolen property were arrested. According to the petitioner, though the arrested accused were in custody for 7 to 10 days, no diamonds are recovered by the police from them. Basically, the grievance of the petitioner is about the police inaction and inertia of the police. According to the petitioner, though the matter involves a huge amount, the police have failed to carry out proper investigation. In the circumstances, the petitioner has prayed that further investigation of the said case be transferred to the Economic Offences Wing, Mumbai or to the Crime Branch, C.I.D. and appropriate direction be given to the agency to whom the investigation is transferred.

3. On 16/10/2006, this court has, after hearing the learned counsel for the petitioner and the learned Public Prosecutor, given the following directions:

“6. We, therefore, direct the Sr. P.I., D.B. Marg Police Station, Mumbai to apply to the learned Magistrate Girgaum, Mumbai for carrying out the

further investigation in the matter and complete the exercise and report to the learned Magistrate as well as submit a copy of the report to this Court within four weeks from today. We make it clear that the Investigating Officer should make all efforts to attach the properties of all the accused persons i.e. the principal offenders, the receiver of the stolen properties so that the victims at the conclusion of the trial can be well compensated for the loss suffered otherwise the accused even though convicted would enjoy the fruits of the crime considering the nature of the offences committed by them to the extent of the volume and valuation of diamonds misappropriated in the transaction by cheating the complainants thereby causing wrongful loss to them and wrongful gain out of the crime.”

4. In response to the petition, affidavit is filed by Mr. Rajan Katdare, the Senior Inspector of Police, D.B. Marg Police Station, Mumbai. He has set out the practice which is followed by the diamond traders. He has denied the allegations made in the petition. Annexed to this affidavit is a chart which indicates the status of various cases of similar nature registered with the D.B. Marg Police Station. We find that in all these cases, charge sheets are filed. In most of the cases, the police have not been able to recover the diamonds. However, in few cases, they have been able to recover diamonds.

5. We have heard Mr. Kadam, the learned counsel for the petitioner. He made a serious grievance about the investigation conducted by the D.B. Marg Police Station. He states that the affidavit filed by Mr. Rajan Katdare and the chart annexed to it support the case of the petitioner that the police are not conducting a proper investigation. The investigation is merely a farce. The

learned counsel drew our attention to the remand application filed by the police. The remand application states that when the inquiry was made with Bharat Vallabh Bagdia - the co-accused, he stated that he had received the stolen property. However, he refused to return it. The learned counsel urged that if the accused has admitted that he has received the stolen property, there is no reason why the police cannot make efforts to recover the property. He submitted that the inaction of the police is writ large from the affidavit filed by the police. The learned counsel also contended that whereas in some cases, the D.B. Marg Police Station is registering the offence, in some cases of similar nature, the complainants are driven to file private complaints. This conduct, according to the learned counsel, is done with an oblique motive. He submitted that therefore, the investigation may be transferred.

6. We have also heard Mr. Mhaispurkar, the learned A.P.P. appearing for the State. In our opinion, it is not necessary to transfer the investigation to any other agency. We, however, cannot direct the police to recover property by using third degree methods. The grievance of the petitioner could be redressed if the police comply with the direction given by this court in its order dated 16/10/2006 in the paragraph which we have quoted hereinabove. If the accused have admitted that they have received the stolen property but have refused to return the property as directed by this court, the investigating officer should attach the properties of the accused in accordance with law. All efforts will have to be made by the investigating officer to trace the properties of the accused. If the petitioner has any particulars of the properties of the

accused, the petitioner must furnish them to the D.B. Marg Police Station. The learned counsel for the petitioner states that if the petitioner has any clues, the petitioner will furnish them to the D.B. Marg Police Station. We direct the D.B. Marg Police Station to make all efforts to trace the properties of the accused. We hope and trust that all possible efforts will be made by the police to trace the properties of the accused. The investigating officers shall also work on any leads that may be offered by the petitioner. We also hope that the D.B. Marg Police Station will treat all the complainants equally. It is not proper for the police to register some complaints and direct some of the complainants to approach the Magistrate. If this is true, it is high time that the Senior Inspector of D.B. Marg Police Station takes necessary steps to ensure that the police do not adopt a partisan approach. Needless to say that it will be open to the police to file an additional charge sheet under section 173(8) of the Criminal Procedure Code. No further directions are necessary. In our opinion, it is not necessary to entertain this petition. However, the petitioner will be at liberty to adopt any other remedy if it is available to him, in law. The petition is disposed of in the aforestated terms.

[SMT. RANJANA DESAI, J.]

[ANOOP V. MOHTA, J.]